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<b>K.V., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 10-1227</b>
	)	<b>Issued: December 3, 2010</b>
<b>U.S. POSTAL SERVICE, FORT DEARBORN</b>	)	
<b>POST OFFICE, Chicago, IL, Employer</b>	)	
	)	

### Case Submitted on the Record

Before:  
COLLEEN DUFFY KIKO, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

On March 30, 2010 appellant filed a timely appeal from a March 11, 2010 nonmerit decision of the Office of Workers' Compensation Programs denying her request for reconsideration, as it was untimely and did not show clear evidence of error. As the most recent merit decision was issued on June 30, 2008, the Board lacks jurisdiction to review the merits of this case pursuant to 20 C.F.R. §§ 501.2(c) and 501.3.<sup>1</sup>

The issue is whether the Office properly denied appellant's request for reconsideration, as it was untimely and failed to demonstrate clear evidence of error.

<sup>1</sup> For Office decisions dated November 19, 2008 or later, a claimant has 180 days to file an appeal with the Board. 20 C.F.R. § 501.3(e). For Office decisions issued before November 19, 2008, a claimant had one year in which to file an appeal. *See* 20 C.F.R. § 501.3(d)(2).

### **FACTUAL HISTORY**

On May 13, 2008 appellant, then a 51-year-old letter carrier, filed a claim alleging that she sustained an injury to her left leg and knee on May 9, 2008 when she became pinned against a truck that was backing up. She did not stop work.

By decision dated June 30, 2008, the Office denied appellant's claim on the grounds that the medical evidence was insufficient to establish that she sustained an injury as alleged. It found that she was pinned against a truck on May 9, 2008 but had not submitted sufficient medical evidence to show that she sustained a medical condition causally related to the accepted work event.

On February 18, 2010 appellant requested reconsideration. She related that after the incident on May 9, 2008 she experienced severe pain in her legs. Appellant stated, "I have been seeing a doctor regularly and I have been informed that I will need surgery to correct the problem this accident caused."

Appellant submitted numerous physical therapy notes and reports from a physician's assistant dated throughout 2008. She also submitted a description of the accident dated May 13, 2008.

By decision dated March 11, 2010, the Office denied appellant's request for reconsideration after finding that it was not timely and did not show clear evidence of error.

On appeal, appellant related that she believed that the employing establishment was following the proper procedures to make sure she was covered by workers' compensation for her injury. She enclosed new medical evidence.

### **LEGAL PRECEDENT**

The Office, through regulations, has imposed limitations on the exercise of its discretionary authority under 5 U.S.C. § 8128(a) of the Federal Employees' Compensation Act.<sup>2</sup> As once such limitation, 20 C.F.R. § 10.607 provides that an application for reconsideration must be sent within one year of the date of the Office decision for which review is sought. The Office will consider an untimely application only if the application demonstrates clear evidence on the part of the Office in its most recent merit decision. The application must establish, on its face, that such decision was erroneous.<sup>3</sup>

The term "clear evidence of error" is intended to represent a difficult standard. The claimant must present evidence which on its face shows that the Office made an error (for example, proof of a miscalculation in a schedule award). Evidence such as a detailed, well-rationalized medical report which, if submitted prior to the Office's denial, would have created a

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<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> 20 C.F.R. § 10.607.

conflict in medical opinion requiring further development, is not clear evidence of error and would not require a review of the case on the director's own motion.<sup>4</sup> To establish clear evidence of error, a claimant must submit evidence relevant to the issue which was decided by the Office. The evidence must be positive, precise and explicit and must manifest on its face that the Office committed an error.<sup>5</sup>

### ANALYSIS

The Office properly determined that appellant failed to file a timely application for review. Its procedures provide that the one-year time limitation period for requesting reconsideration begins on the date of the original Office decision.<sup>6</sup> A right to reconsideration within one year also accompanies any subsequent merit decision on the issues.<sup>7</sup> As appellant's March 11, 2010 request for reconsideration was submitted more than one year after the last merit decision of record, June 30, 2008, it was untimely. Consequently, she must demonstrate clear evidence of error by the Office in denying her claim for compensation.<sup>8</sup>

On February 18, 2010 appellant requested reconsideration. She described the May 9, 2008 work incident and the resulting pain in her legs. Appellant related that a physician told her that she needed surgery because of the May 9, 2008 incident. The relevant issue, however, is whether the medical evidence establishes that she sustained an injury to her leg as a result of being pinned against a truck on May 9, 2008. As this issue is medical in nature, it can only be resolved through the submission of medical evidence.<sup>9</sup> Appellant's lay opinion on the matter is not relevant, as the Board has held that lay individuals are not competent to render a medical opinion.<sup>10</sup> Consequently, her contentions are insufficient to establish clear evidence of error by the Office.

Appellant submitted reports dated 2008 from a physician's assistant and a physical therapist. Section 8101(2) of the Act provides that the term physician includes surgeons, podiatrist, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law.<sup>11</sup> Physical therapists and

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<sup>4</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.3(b) (April 1991).

<sup>5</sup> *Robert F. Stone*, 57 ECAB 292 (2005); *Leon D. Modrowski*, 55 ECAB 196 (2004); *Darletha Coleman*, 55 ECAB 143 (2003).

<sup>6</sup> 20 C.F.R. § 10.607(a).

<sup>7</sup> *Robert F. Stone*, *supra* note 5.

<sup>8</sup> 20 C.F.R. § 10.607(b); *see Debra McDavid*, 57 ECAB 149 (2005).

<sup>9</sup> *George C. Vernon*, 54 ECAB 319 (2003).

<sup>10</sup> *Gloria J. McPherson*, 51 ECAB 441 (2000).

<sup>11</sup> 5 U.S.C. § 8101(2).

physician's assistants are not considered physicians as defined under the Act and thus their reports do not constitute competent medical evidence.<sup>12</sup>

On appeal, appellant noted her belief that the employing establishment was handling her claim to make sure that she received appropriate benefits. The issue, however, is whether her untimely request for reconsideration establishes error by the Office in denying her claim. As the evidence submitted by appellant is insufficient to raise a substantial question as to the correctness of the Office's last merit decision, she has not established clear evidence of error.<sup>13</sup>

### **CONCLUSION**

The Board finds that the Office properly denied appellant's request for reconsideration as it was untimely and failed to demonstrate clear evidence of error.<sup>14</sup>

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<sup>12</sup> *Id*; *J.M.*, 58 ECAB 448 (2007); *G.G.*, 58 ECAB 389 (2007); *David P. Sawchuck*, 57 ECAB 316 (2006); *Allen C. Hundley*, 53 ECAB 551 (2002).

<sup>13</sup> *See D.D.*, 58 ECAB 206 (2006); *Jack D. Johnson*, 57 ECAB 593 (2006).

<sup>14</sup> Appellant submitted new evidence on appeal. The Board lacks jurisdiction to review evidence for the first time on appeal. 5 U.S.C. § 501.2(c).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated March 11, 2010 is affirmed.

Issued: December 3, 2010  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board